

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MATTHEW LOUIS MERCADO,

Plaintiff,

-against-

TOWN OF GOSHEN; ORANGE COUNTY
COURTS & CORRECTIONAL FACILITY;
JUDGE FREEHILL; DA JANINE KOVACS,

Defendants.

20-CV-5399 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

Plaintiff, currently detained at the Orange County Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants have violated his federal constitutional rights. By order dated August 13, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.¹

STANDARD OF REVIEW

The Prison Litigation Reform Act requires that federal courts screen complaints brought by prisoners who seek relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The Court must dismiss a prisoner's *in forma pauperis* complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint if the court lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*.

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See 28 U.S.C. § 1915(b)(1)*.

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the “special solicitude” in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief “that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true “[t]hreadbare recitals of the elements of a cause of action,” which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

BACKGROUND

The following allegations are taken from the complaint, which is not a model of clarity. Since January 1, 2020, Plaintiff has been “fals[e]ly & illegally detained & unlawfully imprisoned by the Goshen County Court System.” (ECF No. 1, at 4.) He was indicted for burglary in the second degree, references being on probation, and maintains that under the “new bail reform law,” he should have been released. He writes, “I am not filing suit on State’s Bail Reform now I

am filing suit for my being illegally detained, false imprisonment unlawfully imprisoned are all violations of my constitutional right which have all been violated.” (*Id.*)

Plaintiff further state that he has “grieved the Courts Judges DA’s & filed suit & also A Habias [sic] Corpus.” (*Id.* at 5.) He seeks monetary compensation and immediate release from custody.

Plaintiff attaches to his complaint a letter addressed “[t]o whom it may concern,” which restates many of the facts in the complaint and also states, “I have written a grievance & civil suit & both had informed me to go this way 1st as to file a writ of habeas corpus to gain my relief. So I did no response as of yet.” (*Id.* at 7.) Plaintiff also attaches a news clipping about the bail reform law including his handwritten notes; the first page of an affirmation filed in his criminal case in the state court by Orange County Assistant District Attorney Janine Kovacs (named as a defendant here); and a document by the Center for Court Innovation explaining the bail reform law.

Plaintiff’s submission also includes a document labeled “Matthew Mercado VS Orange County Courts; D.A. Janine Kovacs & Judge Robert Freehill,” which appears to be part of an amended complaint that Plaintiff filed in a previous case, *Mercado v. Orange Cnty. Cts.*, ECF 1:19-CV-11905, 11 (S.D.N.Y. Mar. 23, 2020). (*Id.* at 15-16.) In that action, Plaintiff asserted claims against the “Orange County Courts,” two female District Attorneys, Judge Robert Freehill, the “Orange County Legal Aid Society & District Attorney,” and the New Windsor Police Department. By order dated January 28, 2020, Chief Judge McMahon dismissed Plaintiff’s claims against Judge Freehill and the assistant district attorneys on immunity grounds, and dismissed his claims against the Orange County Courts as barred by the Eleventh Amendment. Chief Judge McMahon granted Plaintiff leave to amend his complaint to detail his

Fourth Amendment claims against individual police officers. ECF 1:19-CV-11905, 8. In response to the order, Plaintiff submitted two amended complaints in which he named the same defendants named in his original pleadings. ECF 1:19-CV-11905, 11, 12. By order dated March 23, 2020, Chief Judge McMahon dismissed the action on the same grounds that she dismissed the original complaint. ECF 1:19-CV-11905, 13. It is unclear why Plaintiff included a pleading from his previous action in his submission. In any event, though Plaintiff names some of the same defendants in this action, his claims here appear to be slightly different.

DISCUSSION

Because Plaintiff invokes the Due Process Clause and asserts claims of false imprisonment, the Court construes those claims as arising under 42 U.S.C. § 1983. To state a claim under 42 U.S.C. § 1983, a plaintiff must allege both that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law, or a “state actor.” *West v. Atkins*, 487 U.S. 42, 48-49 (1988).

A. Claims against the Town of Goshen

When a plaintiff sues a municipality under § 1983, it is not enough for the plaintiff to allege that one of the municipality’s employees or agents engaged in some wrongdoing. The plaintiff must show that the municipality itself caused the violation of the plaintiff’s rights. *See Connick v. Thompson*, 131 S. Ct. 1350, 1359 (2011) (“A municipality or other local government may be liable under this section [1983] if the governmental body itself ‘subjects’ a person to a deprivation of rights or ‘causes’ a person ‘to be subjected’ to such deprivation.”) (quoting *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 692 (1978)); *Cash v. Cnty. of Erie*, 654 F.3d 324, 333 (2d Cir. 2011). In other words, to state a § 1983 claim against a municipality, the plaintiff must allege facts showing (1) the existence of a municipal policy, custom, or practice, and (2) that the policy, custom, or practice caused the violation of the plaintiff’s constitutional

rights. *See Jones v. Town of East Haven*, 691 F.3d 72, 80 (2d Cir. 2012); *Bd. of Cnty. Comm'r's of Bryan Cnty. v. Brown*, 520 U.S. 397, 403 (1997) (internal citations omitted).

Because Plaintiff fails to allege any facts suggesting that the Town of Goshen has a policy, custom, or practice that caused a violation of his constitutional rights, the Court dismisses Plaintiff's claims against the Town of Goshen. 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Claims against Orange County Courts and Correctional Facility

The Court must dismiss Plaintiff's claims against the Orange County Courts and Correctional Facility as barred by the Eleventh Amendment. “[A]s a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states' Eleventh Amendment immunity” *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009). “The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state.” *Id.*

New York has not waived its Eleventh Amendment immunity to suit in federal court, and Congress did not abrogate the states' immunity in enacting 42 U.S.C. § 1983. *See Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 40 (2d Cir. 1977). Moreover, “the New York State Unified Court System is unquestionably an ‘arm of the State,’ and is entitled to Eleventh Amendment sovereign immunity.” *Gollomp*, 568 F.3d at 368 (citation omitted); *see Brown v. Astoria Fed. Sav. & Loan Ass'n*, 444 F. App'x 504 n.1 (2d Cir. 2011) (summary order) (claims against New York Supreme Court barred by the Eleventh Amendment) (citing *Gollomp*, 568 F.3d at 368).

Plaintiff sues the “Orange County Court,” which is part of the New York State Unified Court System. The Court therefore dismisses Plaintiff's § 1983 claims against this Defendant

under the doctrine of Eleventh Amendment immunity and because these claims are frivolous.²

See Montero v. Travis, 171 F.3d 757, 760 (2d Cir. 1999) (“A complaint will be dismissed as ‘frivolous’ when ‘it is clear that the defendants are immune from suit.’” (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989))).

The Court must also dismiss any claims Plaintiff may be asserting against the Orange County Correctional Facility as an entity separate from the Orange County Court. Section 1983 provides that an action may be maintained against a “person” who has deprived another of rights under the “Constitution and Laws.” 42 U.S.C. § 1983. The Orange County Correctional Facility is not a “person” within the meaning of § 1983. *See Will v. Mich. Dep’t of State Police*, 491 U.S. 58 (1989) (state is not a “person” for the purpose of § 1983 claims); *Whitley v. Westchester Cnty. Corr. Fac. Admin.*, No. 97-CV-420 (SS), 1997 WL 659100, at *7 (S.D.N.Y. Oct. 22, 1997) (correctional facility or jail not a “person” within the meaning of § 1983). The Court therefore dismisses any claims Plaintiff may be asserting against the Orange County Correctional Facility. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

C. Claims against Judge Freehill and Assistant District Attorney Kovacs

Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, “acts arising out of, or related to, individual cases before the judge are considered judicial in nature.” *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). “Even allegations of bad faith or malice cannot overcome judicial immunity.” *Id.* (citations omitted). This is because “[w]ithout insulation from liability, judges would be subject to harassment and intimidation” *Young v. Selsky*, 41 F.3d

² See also *Zuckerman v. Appellate Div., Second Dep’t, Supreme Court*, 421 F.2d 625, 626 (2d Cir. 1970) (holding that a state court is not a “person” for the purpose of § 1983 liability).

47, 51 (2d Cir. 1994). In addition, as amended in 1996, § 1983 provides that “in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. § 1983.

Judicial immunity does not apply when the judge takes action “outside” his judicial capacity, or when the judge takes action that, although judicial in nature, is taken “in absence of jurisdiction.” *Mireles*, 502 U.S. at 9-10; *see also Bliven*, 579 F.3d at 209-10 (describing actions that are judicial in nature). But “the scope of [a] judge’s jurisdiction must be construed broadly where the issue is the immunity of the judge.” *Stump v. Sparkman*, 435 U.S. 349, 356 (1978).

Additionally, prosecutors are immune from civil suits for damages for acts committed within the scope of their official duties where the challenged activities are not investigative in nature but, rather, are “intimately associated with the judicial phase of the criminal process.” *Simon v. City of New York*, 727 F.3d 167, 171 (2d Cir. 2013) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)); *see also Buckley v. Fitzsimmons*, 509 U.S. 259 (1993) (holding that absolute immunity is analyzed under “functional approach” that “looks to the nature of the function performed, not the identity of the actor who performed it”). In addition, prosecutors are absolutely immune from suit for acts that may be administrative obligations but are “directly connected with the conduct of a trial.” *Van de Kamp v. Goldstein*, 555 U.S. 335, 344 (2009).

Here, Plaintiff’s claims against Judge Freehill and ADA Kovacs are based on actions taken within the scope of their official duties and associated with the conduct of a trial. The Court therefore dismisses Plaintiff’s claims against these defendants because they seek monetary relief against a defendant who is immune from suit and as frivolous. 28 U.S.C. § 1915(e)(2)(b)(i), (iii); *see Collazo v. Pagano*, 656 F. 3d 131, 134 (2d Cir. 2011) (holding that

claim against prosecutor is frivolous if it arises from conduct that is “intimately associated with the judicial phase of the criminal process”).

D. Pending state-court proceedings

To the extent that Plaintiff, in seeking injunctive relief, asks this Court to intervene in his pending state-court proceedings, the Court must dismiss those claims. In *Younger v. Harris*, 401 U.S. 37 (1971), the United States Supreme Court held that a federal court may not enjoin a pending state-court criminal proceeding in the absence of special circumstances suggesting bad faith, harassment, or irreparable injury that is both serious and immediate. See *Heicklen v. Morgenthau*, 378 F. App'x 1, 2 (2d Cir. 2010) (quoting *Gibson v. Berryhill*, 411 U.S. 564, 573-74 (1973)). *Younger* abstention seeks to avoid federal court interference with ongoing state criminal prosecutions, state-initiated civil enforcement proceedings, and state civil proceedings that involve the ability of state courts to perform their judicial functions. *Jones v. Cnty. of Westchester*, 678 F. App'x 48, 49-50 (2d Cir. 2017) (summary order). Thus, abstention is appropriate in only three categories of state court proceedings: (1) state criminal prosecutions; (2) civil enforcement proceedings that are “akin to criminal prosecutions”; and (3) civil proceedings “that implicate a State’s interest in enforcing the orders and judgments of its courts.” *Sprint Commc’ns, Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013).

If a “federal lawsuit implicates the way that New York courts manage their own . . . proceedings — a subject in which “the states have an especially strong interest” — a State’s interest is most likely implicated, warranting abstention under *Younger*. *Falco v. Justices of the Matrimonial Parts of Supreme Court of Suffolk Cnty.*, 805 F.3d 425, 427 (2d Cir. 2015) (quoting *Phillips, Nizer, Benjamin, Krim & Ballon v. Rosenstiel*, 490 F.2d 509, 516 (2d Cir. 1973)). When any of these types of proceedings are pending in state court, the *Younger* doctrine bars federal courts from ordering injunctive relief that interferes with the state court proceedings.

“State proceedings are pending for *Younger* purposes until all appellate court remedies have been exhausted.” *People United for Children, Inc. v. City of New York*, 108 F. Supp. 2d 275, 290 n.6 (S.D.N.Y. 2000).

Plaintiff’s request that this Court intervene in his state-court proceedings implicates how the state court manages its proceedings. *Younger* abstention therefore applies, and this Court will not intervene in those proceedings. *Falco*, 805 F.3d at 428.

E. *Habeas* relief

To the extent Plaintiff seeks release from custody, the Court liberally construes his submission as a *habeas corpus* petition filed under 28 U.S.C. § 2241. Under § 2241(c)(3), *habeas corpus* relief is available to a person “in custody in violation of the Constitution or laws or treaties of the United States.” A prisoner in state custody generally must challenge his confinement in a *habeas corpus* petition under 28 U.S.C. § 2254, but such relief is available under § 2241 to a state pretrial detainee challenging his custody as unlawful under the Constitution or federal law. *See Robinson v. Sposato*, No. 11-CV-0191, 2012 WL 1965631, at *2 (E.D.N.Y. May 29, 2012); *see also Hoffler v. Bezio*, 831 F. Supp. 2d 570, 575 (N.D.N.Y. 2011), *aff’d on other grounds*, 726 F.3d 144 (2d Cir. 2013); *Marte v. Berkman*, No. 11-CV-6082 (JFK), 2011 WL 4946708, at *5 (S.D.N.Y. Oct. 18, 2011), *aff’d on other grounds sub nom., Marte v. Vance*, 480 F. App’x 83 (2d Cir. 2012) (summary order).

Before seeking § 2241 *habeas corpus* relief, however, a state pretrial detainee must first exhaust his available state-court remedies. *See United States ex rel. Scranton v. New York*, 532 F.2d 292, 294 (2d Cir. 1976) (“While [§ 2241] does not by its own terms require the exhaustion of state remedies as a prerequisite to the grant of federal habeas relief, decisional law has superimposed such a requirement in order to accommodate principles of federalism.”). In the pretrial context, such exhaustion includes seeking *habeas corpus* relief in the state courts and, if

necessary, appealing all the way up to the New York Court of Appeals, the State of New York's highest court. *See N.Y.C.P.L.R. § 7001, et seq.*

Plaintiff states that he has filed a petition for *habeas corpus* in the state court, but has not yet received a response. Exhaustion of remedies requires more than merely filing a state-court *habeas* petition. To exhaust his state-court remedies, Plaintiff's state *habeas* petition must be denied by the New York Supreme Court, Orange County, and he must appeal that denial all the way up to the New York Court of Appeals. Because Plaintiff does not show that he exhausted his available state-court remedies before filing his § 2241 petition in this Court, the Court denies without prejudice any application for relief under § 2241.

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend his complaint.

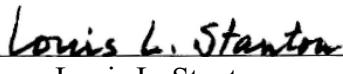
CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff and note service on the docket.

Plaintiff's complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a)(1), is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).

SO ORDERED.

Dated: August 28, 2020
New York, New York



Louis L. Stanton
U.S.D.J.